Remarks

1. Applicant is grateful to the Examiner for indicating that Applicant's previous arguments were persuasive.

2. Applicant has taken the opportunity to review the specification to correct typographical errors and correct inconsistencies etc. as suggested by the Examiner in sections 4 and 5 of the Office Action.

3. Applicant notes that the Examiner now rejects claims 21 to 35 under U.S.C. §103(a) as being unpatentable over Grover et al (US6819662) "Grover 612" in view of Grover (US5848139) "Grover 139". The Examiner will be aware that in *ex parte* examination of patent applications, the Patent and Trademark Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent and Trademark Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent and Trademark Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985). A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531

(Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

4. Claim 21 as currently pending comprises the steps in a method of controlling the admission of a traffic flow to a communications network of:

A sampling an aggregated traffic flow on a network resource to which the traffic flow is to be admitted to obtain a mean bandwidth measurement and a bandwidth variance measurement of said aggregated traffic flow;

B determining from said mean bandwidth and variance measurements a price for bandwidth and a separate price for variance;

C sampling the traffic flow to be admitted to the network resource to measure its mean bandwidth and variance; and

D applying to said traffic flow the separate prices for bandwidth and variance as a means of controlling admission of the traffic flow to the network resource.

5. Applicant has carefully considered the disclosure of Grover 612 and, in particular, the numerous sections thereof as recited by the Examiner in part 1 of section 7 of the Office Action and cannot derive from Grover 612 the feature identified as step A in paragraph 4 of this paper. In this regard, it should be noted that the term "variance" is used only once (column 16, line 33) in the whole of this reference but this single usage does not relate to "sampling" an aggregated traffic flow nor to obtaining a "bandwidth variance measurement". Further, the term "sample" on its very few occurrences in the text of Grover 612 is never used in

conjunction with obtaining measurements of any sort from an aggregated traffic flow. The term "sampling" indicative of a method step is not employed at all in Grover 612. Therefore, if the Examiner remains of the view that Grover 612 does disclose the contested method step then the Applicant is entitled to request the Examiner to more clearly and distinctly identify the specific section or sections of Grover 612 that are purported to disclose this step. It is also reasonable for the Applicant to ask that each such section of Grover 612 is accompanied with a reasoned statement explaining how each such section purports to disclose the respective method step. It is incumbent in law on the Patent and Trademark Office to establish a prima facie case of obviousness. This is not achieved through a selection of relatively large sections of a prior art reference with the only "reasoning" offered as to what such sections are purported to disclose being a broad statement that such sections disclose one of the steps of the invention. It is not reasonable to expect the Applicant to second guess the Examiner's reasons for selecting certain parts of the teaching of a prior art reference by way of understanding and determining the validity of a 35 U.S.C. §103 (a) rejection. The rejection should be such that it can be readily followed and understood. This is not possible in the present instance.

6. Similar observations to those of paragraph 5 of this paper can be made with respect to Grover 139 and steps **B**, **C**, **D** of claim 21 as currently pending. Where, for example, does it disclose in Grover 139 separate prices for variance and bandwidth? Grover 139 discloses a price derived from a slack capacity signal. There is no suggestion that this price comprises separately determined price components for bandwidth and variance respectively. If the Examiner remains of the view that Grover 139 does disclose the contested method steps then the Applicant is entitled to request the Examiner to more clearly and distinctly identify the specific sections of Grover 139 that are purported to disclose these steps. It is also reasonable for the Applicant to ask that each such section of Grover 139 is accompanied with a reasoned statement explaining how each such section purports to disclose the respective method steps.

7. The present invention makes a useful contribution to the art in that it provides a means of managing the admissions of traffic flows to a network resource in accordance with two price determinations relating to the resource, wherein the price determinations can be separately applied to respective corresponding characteristics (measurements) of a traffic flow to be admitted to the resource. This is not disclosed not suggested by the combination of Grover 612 and Grover 139.

8. The Applicant has used his best efforts to understand and respond to the rejections set forth in the current Office Action. Consequently, it would bring the process into disrepute if the nature of this response was used as an excuse to make a next Office Action, if not an allowance, final.

9. In view of the foregoing, it is submitted that the claims presented herewith are in condition for allowance.

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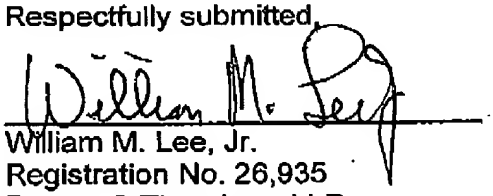
Respectfully submitted,



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